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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/660,444

09/11/2003

Andrzej Chanduszeko

NMT-015

4893

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7590

08/01/2006

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EXAMINER

ANDERSEN, MICHAEL T

ART UNIT

PAPER NUMBER

3734

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,444

Applicant(s)

CHANDUSZKO ET AL.

Examiner

M. Thomas Andersen

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-42 is/are pending in the application.
- 4a) Of the above claim(s) 1-30 and 43-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/14/03, 2/19/04, 4/26/04, 8/13/04,
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

Acknowledgement is made of the claim to benefit of provisional application number 60/412,952, filed on 09/23/2002.

Election/Restrictions

Claims **1-30** and **43-59** are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 11, 2006.

Information Disclosure Statement

The information disclosure statements (IDS) received on 11/14/2003, 2/19/2004, 4/26/2004, 8/13/2004, 9/03/2004, and 9/23/2005 are acknowledged. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Specification

The disclosure is objected to because of the following minor informalities: page 17, line 11, "an" should be inserted in the phrase "In other embodiment" ; page 21, line 2, a replicated period should be deleted.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3734

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **31-34** and **37-40** are rejected under 35 U.S.C. 102(a) as being anticipated by **Blaeser et al., US 2003/0208232**, filed on May 6, 2002. Blaeser discloses PFO closure devices and related methods.

Figure 39 shows a method in operation of placing a first flexible member 406 in contact with a first side of a tissue; placing a second flexible member 406 in contact with a second side of said tissue; and applying pressure with at least the first or second members to said tissue. There is also shown a cutting member 402 forming a hold in said tissue. An occlusion device in the form of a balloon 410 applies the pressure and occludes the hole formed. The balloon 410 can be considered a septal occluder.

Claims **31, 35-36, 37, and 41-42** are rejected under 35 U.S.C. 102(b) as being anticipated by **Sawyer et al., U.S. Patent No. 5,749,895**.

Sawyer discloses an apparatus and method for welding tissue. Figures 3A-3C show a method of placing a first flexible member 26 in contact with a first side of a tissue 22, placing a second flexible member 30 in contact with a second side of said tissue, applying pressure with at least the first or second said members, providing a cutting member for forming a hole 28 in said tissue, and providing a tissue welding apparatus 32 for joining tissue.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Thomas Andersen whose telephone number is (571) 272-8024. The examiner can normally be reached on M-F 8AM-4:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Thomas Andersen

July 22, 2006

A handwritten signature in black ink, appearing to read "MJ Hayes", is positioned above the printed name and title.

MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER